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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,764	03/25/2004	Thomas C. May	MIT5038USNP	5892

27777 7590 10/06/2009  
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NEW BRUNSWICK, NJ 08933-7003

EXAMINER
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BATES, DAVID W

ART UNIT	PAPER NUMBER
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3775

MAIL DATE	DELIVERY MODE
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10/06/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/808,764	<b>Applicant(s)</b> MAY ET AL.	
	<b>Examiner</b> DAVID W. BATES	<b>Art Unit</b> 3775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 May 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3,5,7 and 9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5,7 and 9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3, 5, 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dinger III et al. (US 2005/0159812 A1) in view of Schmieding (US 5,211,647).

3. Regarding claims 1, 7 and 9, Dinger III et al. teach in a combination of two embodiments:

**An implantable cross-pin for use in an ACL repair procedure**  
(see fig. 6, implant for repairing soft tissue injuries  
{abstract}, including ACL [0002]) **comprising:**

**an elongated member (10) having a proximal end** (end away from leading end 24), **a distal end** (leading end 24), **and an outer surface** (outside of the device);

**a nose member** (chamfering 16) **extending out from the distal end of said elongated member having a proximal end and a distal end;**

**an axial trough (channel 18) in the elongated member extending through the outer surface, said trough having a proximal end, a distal end, a bottom, opposed ends, an open top, and a passageway;**

**a guide wire opening (see fig. 3, opening 14) in the distal end of the nose member and concentric with the central longitudinal axis of the elongated member;**

**an interior tunnel (12) having a passage with an enclosed circular perimeter in the nose member extending from the guide wire opening and extending into the trough such that the passage is in communication with the guide wire opening and the trough; and**  
**wherein the cross-pin comprises a biocompatible material [0006].**

Dinger III et al. do not teach the interior tunnel being obliquely oriented relative to the central longitudinal axis of the elongated member, nor a guide wire seated in the axial trough and extending through the interior tunnel and the guide wire opening. Dinger III et al. do teach the holes 12 and the opening 14 being interconnected. However, in fig. 3, Schmieding teaches a connection for a guide wire (suture 12) from the outer surface trough 17, where the guide wire is seated in the trough and extends to the center of the elongated member at the center

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of the tip by using a trough (see fig. 4, cutout 17 can be up to half of the circumference {col. 2, lines 66-67}).

It would have been obvious to one with ordinary skill in the art at the time of the invention to incorporate design of the guidewire passage of Schmieding with the device of Dinger III et al. to predictably achieve protection of the guidewire from damage (col. 3, line 2).

4. Regarding claims 3 and 5, the above claimed limitations of claim 1 have been suggested by the combination of Dinger III et al. in view of Schmieding. Further, the combination discloses the claimed invention except for the materials selection. It would have been obvious to one having ordinary skill in the art at the time the invention was made to select a bioabsorbable material from one of the polymer groups claimed, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

#### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1, 3, 5, 7, and 9 have been considered but are moot in view of the new ground(s) of rejection.

**Conclusion**

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- Gatturna (US 4,968,315)
- Singhatat et al. (US 7,338,492 B2)
- Goble et al. (US 5,702,397)
- Anspach, Jr. (US 5,102,421)

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID W. BATES whose telephone number is (571)270-7034. The examiner can normally be reached on Monday-Friday 9:00AM - 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Barrett can be reached on 571-272-4746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/D. W. B./

Examiner, Art Unit 3775

/Thomas C. Barrett/

Supervisory Patent

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